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DEPARTMENT OF HEALTH

Compilation of Chapter 11-262
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SUMMARY

1. Chapter 11-262 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 262

HAZARDOUS WASTE MANAGEMENT

STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

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SUBCHAPTER A

GENERAL

§11-262-10 Purpose, scope, and applicability. (a) This chapter establishes standards for generators of hazardous waste. Chapters 11-260 through 11-280 govern hazardous waste management in the State. Reference to the other chapters may be necessary, specifically chapters 11-260 and 11-261 which are essential for defining terms and determining if hazardous waste is being generated.

(b) Sections 11-261-5(c) and (d) must be used to determine the applicability of provisions of this chapter that are dependent on calculations of the quantity of hazardous waste generated per month.

(c) A generator who treats, stores, or disposes of hazardous waste on-site must only comply with the following sections and subsections of this chapter with respect to that waste: section 11-262-11 for determining whether or not the generator has a hazardous waste, section 11-262-12 for obtaining an EPA identification number, section 11-262-34 for accumulation of hazardous waste, subsections 11-262-40(c) and (d) for recordkeeping, section 11-262-43 for additional reporting, and if applicable, section 11-262-70 for farmers.

(d) Any person who exports or imports hazardous waste subject to the federal manifesting requirements of 40 CFR Part 262, or subject to the universal waste management standards of 40 CFR Part 273, or subject to chapter 11-273, to or from the countries listed in section 11-262-58(a)(1) for recovery must comply with subchapter H.

(e) Any person who imports hazardous waste from outside of the United States into the State must comply with the standards applicable to generators established in this chapter.

(f) A farmer who generates waste pesticides which are hazardous waste and who complies with all of the requirements of section 11-262-70 is not required to comply with other standards in this chapter, or chapter 11-270, 11-264, 11-265, or 11-268 with respect to such pesticides.

(g) A person who generates a hazardous waste as defined by chapter 11-261 is subject to the compliance requirements and penalties prescribed in sections 342J-7 and 342J-9, HRS if the generator does not comply with the requirements of this chapter.

(h) An owner or operator who initiates a shipment of hazardous waste from a treatment, storage, or disposal facility must comply with the generator standards established in this chapter.

(i) Persons responding to an explosives or munitions emergency in accordance with section 11-264-1(g)(8)(i)(D) or (iv) or section 11-265-1(c)(11)(i)(D) or (iv), and section 11-270-

1(c)(3)(i)(D) or (iii) are not required to comply with the standards of this chapter.

(j) All references in tables and appendices to provisions of the Code of Federal Regulations shall be construed to mean the State rule analogue of the referenced federal regulation (for example, 40 CFR 260.1 shall be construed to mean section 11-260-1 of the Hawaii Administrative Rules).

Note 1: The provisions of section 11-262-34 are applicable to the on-site accumulation of hazardous waste by generators. Therefore, the provisions of section 11-262-34 only apply to owners or operators who are shipping hazardous waste which they generated at that facility.

Note 2: A generator who treats, stores, or disposes of hazardous waste on-site must comply with the applicable standards and permit requirements set forth in chapters 11-264, 11-265, 11-266, 11-268, and 11-270.

[Eff 6/18/94; am 3/13/99; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: 40 C.F.R. §262.10)

§11-262-11 <u>Hazardous waste determination.</u> A person who generates a solid waste, as defined in section 11-261-2, must determine if that waste is a hazardous waste using the following method:

(a) He should first determine if the waste is excluded from regulation under section 11-261-4.

(b) He must then determine if the waste is listed as a hazardous waste in subchapter D of chapter 11-261.

(c) For purposes of compliance with chapter 11-268, or if the waste is not listed in subchapter D of chapter 11-261, the generator must then determine whether the waste is identified in subchapter C of chapter 11-261 by either:

(1) Testing the waste according to the methods set forth in subchapter C of chapter 11-261; or

(2) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.

(d) If the waste is determined to be hazardous, the generator must refer to chapters 11-261, 11-264, 11-265, 11-266, 11-268, and 11-273 for possible exclusions or restrictions pertaining to management of the specific waste. [Eff 6/18/94; am 3/13/99; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: 40 C.F.R. §262.11)

§11-262-12 <u>EPA identification numbers.</u> (a) A generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the Administrator or the director.

(b) A generator who has not received an EPA identification number may obtain one by applying to the director using EPA form 8700-12. Upon receiving the request the Administrator or director will assign an EPA identification number to the generator.

(c) A generator must not offer his hazardous waste to transporters or to treatment, storage, or disposal facilities that have not received an EPA identification number. [Eff 6/18/94; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: 40 C.F.R. §262.12)

SUBCHAPTER B

THE MANIFEST

§11-262-20 General requirements. (a) A generator who transports, or offers for transportation, hazardous waste for offsite treatment, storage, or disposal must prepare a Manifest OMB control number 2050-0039 on EPA form 8700-22, and, if necessary, EPA form 8700-22A, according to the instructions included in the Appendix to this chapter.

(b) A generator must designate on the manifest one facility which is permitted to handle the waste described on the manifest.

(c) A generator may also designate on the manifest one alternate facility which is permitted to handle his or her waste in the event an emergency prevents delivery of the waste to the primary designated facility.

(d) If the transporter is unable to deliver the hazardous waste to the designated facility or the alternate facility, the generator must either designate another facility or instruct the transporter to return the waste.

(e) The requirements of this subchapter do not apply to hazardous waste produced by generators of greater than one-hundred kg but less than one-thousand kg in a calendar month where:

(1) The waste is reclaimed under a contractual agreement pursuant to which:

(i) The type of waste and frequency of shipments are specified in the agreement;

(ii) The vehicle used to transport the waste to the recycling facility and to deliver regenerated material back to the generator is owned and operated by the reclaimer of the waste; and

(2) The generator maintains a copy of the reclamation agreement in his or her files for a period of at least three years after termination or expiration of the agreement.

(f) The requirements of this subchapter and section 11-262-32(b) do not apply to the transport of hazardous wastes on a public or private right-of-way within or along the border of

contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way. Notwithstanding section 11-263-10(a), the generator or transporter must comply with the requirements for transporters set forth in sections 11-263-30 and 11-263-31 in the event of a discharge of hazardous waste on a public or private right-of-way. [Eff 6/18/94; am 3/13/99; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: 40 C.F.R. §262.20)

§11-262-21 Acquisition of manifests. (a) If the state to which the shipment is manifested (consignment state) supplies the manifest and requires its use, then the generator must use that manifest.

(b) If the consignment state does not supply the manifest, then the generator must use the State's manifest.

(c) [Reserved] [Eff 6/18/94; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: 40 C.F.R. §262.21)

§11-262-22 Number of copies. The manifest consists of at least the number of copies which will provide the generator, each transporter, and the owner or operator of the designated facility with one copy each for their records and another copy to be returned to the generator. [Eff 6/18/94; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: 40 C.F.R. §262.22)

§11-262-23 Use of the manifest. (a) The generator must:

(1) Sign the manifest certification by hand; and

(2) Obtain the handwritten signature of the initial transporter and date of acceptance on the manifest; and

(3) Retain one copy, in accordance with subsection 11-262-40(a).

(b) The generator must give the transporter the remaining copies of the manifest.

(c) For shipments of hazardous waste within the United States solely by water (bulk shipments only), the generator must send three copies of the manifest dated and signed in accordance with this section to the owner or operator of the designated facility or the last water (bulk shipment) transporter to handle the waste in the United States if exported by water. Copies of the manifest are not required for each transporter.

(d) For rail shipments of hazardous waste within the State which originate at the site of generation, the generator must send at least three copies of the manifest dated and signed in accordance with this section to:

(1) The next non-rail transporter, if any; or

(2) The designated facility if transported solely by rail; or

(3) The last rail transporter to handle the waste in the United States if exported by rail.

(e) For shipments of hazardous waste to a designated facility in an authorized state which has not yet obtained authorization by EPA to regulate that particular waste as hazardous, the generator must assure that the designated facility agrees to sign and return the manifest to the generator, and that any out-of-state transporter signs and forwards the manifest to the designated facility. [Eff 6/18/94; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: 40 C.F.R. §262.23)

SUBCHAPTER C

PRE-TRANSPORT REQUIREMENTS

§11-262-30 Packaging. Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must package the waste in accordance with the applicable United States Department of Transportation (DOT) regulations on packaging under 49 CFR Parts 173, 178, and 179. [Eff 6/18/94; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: 40 C.F.R. §262.30)

§11-262-31 Labeling. Before transporting or offering hazardous waste for transportation off-site, a generator must label each package in accordance with the applicable U.S. Department of Transportation regulations on hazardous materials under 49 CFR Part 172. [Eff 6/18/94; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: 40 C.F.R. §262.31)

§11-262-32 Marking. (a) Before transporting or offering hazardous waste for transportation off-site, a generator must mark each package of hazardous waste in accordance with the applicable U.S. Department of Transportation regulations on hazardous materials under 49 CFR Part 172;

(b) Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must mark each container of one-hundred and ten gallons or less used in such transportation with the following words and information displayed in accordance with the requirements of 49 CFR 172.304:

HAZARDOUS WASTE -- Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.
Generator's Name and Address ---------- .

Manifest Document Number ---------- .
[Eff 6/18/94; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: 40 C.F.R. §262.32)

§11-262-33 Placarding. Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must placard or offer the initial transporter the appropriate placards according to U.S. Department of Transportation regulations for hazardous materials under 49 CFR Part 172, Subpart F. [Eff 6/18/94; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: 40 C.F.R. §262.33)

§11-262-34 Accumulation time. (a) Except as provided in subsections (d), (e), and (f), a generator may accumulate hazardous waste on-site for ninety days or less without a permit or without having interim status, provided that:

(1) The waste is placed:

(i) In containers and the generator complies with subchapter I of chapter 11-265; and/or

(ii) In tanks and the generator complies with subchapter J of chapter 11-265, except subsection 11-265-197(c) and section 11-265-200; and/or

(iii) On drip pads and the generator complies with subchapter W of chapter 11-265 and maintains the following records at the facility:

(A) A description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every ninety days; and

(B) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal; and/or

(iv) The waste is placed in containment buildings and the generator complies with subchapter DD of chapter 11-265, has placed its professional engineer certification that the building complies with the design standards specified in section 11-265-1101 in the facility's operating record. The professional engineer certification is required prior to operation of the unit. The owner or operator shall maintain the following records at the facility:

(A) A written description of procedures to ensure that each waste volume remains in the unit for no more than ninety days, a written

description of the waste generation and management practices for the facility showing that they are consistent with respecting the ninety day limit, and documentation that the procedures are complied with; or

(B) Documentation that the unit is emptied at least once every ninety days.

In addition, such a generator is exempt from all the requirements in subchapters G and H of chapter 11-265, except for section 11-265-111 and section 11-265-114.

(2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

(3) While being accumulated on-site, each container and tank is labeled or marked clearly with the words, ''Hazardous Waste''; and

(4) The generator complies with the requirements for owners or operators in subchapters C and D in chapter 11-265, with section 11-265-16, and with paragraph 11-268-7(a)(4).

(b) A generator who accumulates hazardous waste for more than ninety days is an operator of a storage facility and is subject to the requirements of chapters 11-264 and 11-265 and the permit requirements of chapter 11-270 unless he has been granted an extension to the ninety-day period. Such extension may be granted by the department if hazardous wastes must remain on-site for longer than ninety days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to thirty days may be granted at the discretion of the director on a case-by-case basis.

(c)(1) A generator may accumulate as much as fifty-five gallons of hazardous waste or one quart of acutely hazardous waste listed in subsection 11-261-33(e) in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with subsection (a) of this section provided he:

(i) Complies with sections 11-265-171, 11-265-172, and subsection 11-265-173(a); and

(ii) Marks his containers either with the words ''Hazardous Waste'' or with other words that identify the contents of the containers.

(2) A generator who accumulates either hazardous waste or acutely hazardous waste listed in subsection 11-261-33(e) in excess of the amounts listed in paragraph (c)(1) of this section at or near any point of generation must, with respect to that amount of excess waste, comply within three days with subsection (a) of

this section or other applicable provisions of chapters 11-260 through 11-279. During the three day period the generator must continue to comply with subparagraphs (c)(1)(i) through (ii) of this section. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

(d) A generator who generates greater than one-hundred kilograms but less than one-thousand kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that:

(1) The quantity of waste accumulated on-site never exceeds six-thousand kilograms;

(2) The generator complies with the requirements of subchapter I of chapter 11-265, except for sections 11-265-176 and 11-265-178;

(3) The generator complies with the requirements of section 11-265-201 in subchapter J of chapter 11-265;

(4) The generator complies with the requirements of paragraphs (a)(2) and (a)(3) of this section, the requirements of subchapter C of chapter 11-265, the requirements of 11-268-7(a)(4); and

(5) The generator complies with the following requirements:

(i) At all times there must be at least one employee either on the premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in subparagraph (d)(5)(iv) of this section. This employee is the emergency coordinator.

(ii) The generator must post the following information next to the telephone:

(A) The name and telephone number of the emergency coordinator;

(B) Location of fire extinguishers and spill control material, and, if present, fire alarm; and

(C) The telephone number of the fire department, unless the facility has a direct alarm.

(iii) The generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;

(iv) The emergency coordinator or his or her designee must respond to any emergencies that arise. The applicable responses are as follows:

(A) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

(B) In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil;

(C) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator has knowledge that a spill has reached surface water, the generator must immediately notify the federal National Response Center (using their 24-hour toll free number 800/424-8802) and the Hawaii Department of Health's Hazard Evaluation and Emergency Response Office via the State Hospital at (808) 247-2191 after business hours or directly at (808) 586-4249 during business hours. The report must include the following information:

(1) The name, address, and U.S. EPA identification number of the generator;

(2) Date, time, and type of incident (e.g., spill or fire);

(3) Quantity and type of hazardous waste involved in the incident;

(4) Extent of injuries, if any; and

(5) Estimated quantity and disposition of recovered materials, if any.

(e) A generator who generates greater than one-hundred kilograms but less than one-thousand kilograms of hazardous waste in a calendar month and who must transport his waste, or offer his waste for transportation, over a distance of two-hundred miles or more for off-site treatment, storage or disposal may accumulate hazardous waste on-site for two-hundred and seventy days or less without a permit or without having interim status provided that he complies with the requirements of subsection (d) of this section.

(f) A generator who generates greater than one-hundred kilograms but less than one-thousand kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding six-thousand kilograms or accumulates hazardous waste for more than one-hundred and eighty days (or for more than two-hundred and seventy days if he must transport his waste, or offer his waste for transportation, over a distance of two-hundred miles or more) is an operator of a storage facility and is subject to the requirements of chapters 11-264 and 11-265 and the permit requirements of chapter 11-270 unless he has been

granted an extension to the 180 day (or 270 day if applicable) period. Such extension may be granted by the department if hazardous wastes must remain on-site for longer than 180 days (or 270 days if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to thirty days may be granted at the discretion of the director on a case-by-case basis.

(g) Failure to comply with any provision of this section shall constitute a violation of these rules as to which the department may take enforcement action under HRS section 342J-7, including but not limited to 342J-7(a)(1), (a)(2), and (a)(3). [Eff 6/18/94; am 3/13/99; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: 40 C.F.R. §262.34)

SUBCHAPTER D

RECORDKEEPING AND REPORTING

§11-262-40 Recordkeeping. (a) A generator must keep a copy of each manifest signed in accordance with subsection 11-262-23(a) for three years or until he receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.

(b) A generator must keep a copy of each Biennial Report and Exception Report for a period of at least three years from the due date of the report.

(c) A generator must keep records of any test results, waste analyses, or other determinations made in accordance with section 11-262-11 for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal.

(d) The periods or retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the director. [Eff 6/18/94; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: 40 C.F.R. §262.40)

§11-262-41 Biennial report. (a) A generator who ships any hazardous waste off-site to a treatment, storage or disposal facility within the United States must prepare and submit a single copy of a Biennial Report to the director by March 1 of each even numbered year. The Biennial Report must be submitted on a form approved by the director, must cover generator activities during the previous year, and must include the following information:

(1) The EPA identification number, name, and address of the generator;
(2) The calendar year covered by the report;
(3) The EPA identification number, name, and address for each off-site treatment, storage, or disposal facility in the United States to which waste was shipped during the year;
(4) The name and EPA identification number of each transporter used during the reporting year for shipments to a treatment, storage or disposal facility within the United States;
(5) A description, EPA hazardous waste number (from chapter 11-261, subchapter C or D), U.S. DOT hazard class, and quantity of each hazardous waste shipped off-site for shipments to a treatment, storage or disposal facility within the United States. This information must be listed by EPA identification number of each such off-site facility to which waste was shipped.
(6) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated.
(7) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984.
(8) The certification signed by the generator or authorized representative.

(b) Any generator who treats, stores, or disposes of hazardous waste on-site must submit a biennial report covering those wastes in accordance with the provisions of chapters 11-270, 11-264, 11-265, and 11-266. Reporting for exports of hazardous waste is not required on the Biennial Report form. A separate annual report requirement is set forth at section 11-262-56. [Eff 6/18/94; am 3/13/99; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: 40 C.F.R. §262.41)

§11-262-42 <u>Exception reporting.</u>

(a)(1) A generator of greater than one-thousand kilograms of hazardous waste in a calendar month who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within thirty-five days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste.

(2) A generator of greater than one-thousand kilograms of hazardous waste in a calendar month must submit an Exception Report to the director if he has not received

a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within forty-five days of the date the waste was accepted by the initial transporter. The Exception Report must include:

(i) A legible copy of the manifest for which the generator does not have confirmation of delivery;

(ii) A cover letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts.

(b) A generator of greater than one-hundred kilograms but less than one-thousand kilograms of hazardous waste in a calendar month who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within sixty days of the date the waste was accepted by the initial transporter must submit a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery, to the director. [Eff 6/18/94; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: 40 C.F.R. §262.42)

§11-262-43 Additional reporting. The director, as he deems necessary under HRS section 342J-6, may require generators to furnish additional reports concerning the quantities and disposition of wastes identified or listed in chapter 11-261. [Eff 6/18/94; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: 40 C.F.R. §262.43)

§11-262-44 Special requirements for generators of between 100 and 1000 kilograms per month. A generator of greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month is subject only to the following requirements in this subchapter:

(a) Subsections 11-262-40(a), (c), and (d), recordkeeping;

(b) Subsection 11-262-42(b), exception reporting; and

(c) Section 11-262-43, additional reporting. [Eff 6/18/94; am 3/13/99; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: 40 C.F.R. §262.44)

SUBCHAPTER E

EXPORTS OF HAZARDOUS WASTE

§11-262-50 Applicability. This subchapter establishes requirements applicable to exports of hazardous waste. Except to the extent section 11-262-58 provides otherwise, a primary

exporter of hazardous waste must comply with the special requirements of this subchapter and a transporter transporting hazardous waste for export must comply with applicable requirements of chapter 11-263. [Eff 6/18/94; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: 40 C.F.R. §262.50)

§11-262-51 Definitions. In addition to the definitions set forth at section 11-260-10, the following definitions apply to this subchapter:

"Consignee" means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste will be sent.

"EPA Acknowledgement of Consent" means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

"Primary exporter" means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with chapter 11-262, subchapter B, which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

"Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal (except short-term storage incidental to transportation).

"Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported. [Eff 6/18/94; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: 40 C.F.R. §262.51)

§11-262-52 General requirements. Exports of hazardous waste are prohibited except in compliance with the applicable requirements of this subchapter and chapter 11-263. Exports of hazardous waste are prohibited unless:

(a) Notification in accordance with section 11-262-53 has been provided;

(b) The receiving country has consented to accept the hazardous waste;

(c) A copy of the EPA Acknowledgment of Consent to the shipment accompanies the hazardous waste shipment and, unless exported by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment)).

(d) The hazardous waste shipment conforms to the terms of the receiving country's written consent as reflected in

the EPA Acknowledgment of Consent. [Eff 6/18/94; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: 40 C.F.R. §262.52)

§11-262-53 Notification of intent to export. (a) A primary exporter of hazardous waste must notify EPA of an intended export before such waste is scheduled to leave the United States. A complete notification should be submitted sixty (60) days before the initial shipment is intended to be shipped off site. This notification may cover export activities extending over a twelve (12) month or lesser period. The notification must be in writing, signed by the primary exporter, and include the following information:

(1) Name, mailing address, telephone number and EPA identification number of the primary exporter;

(2) By consignee, for each hazardous waste type:

(i) A description of the hazardous waste and the EPA hazardous waste number (from subchapters C and D of chapter 11-261 or subparts C and D of 40 CFR Part 261), U.S. DOT proper shipping name, hazard class and identification number (UN/NA) for each hazardous waste as identified in 49 CFR Parts 171 through 177;

(ii) The estimated frequency or rate at which such waste is to be exported and the period of time over which such waste is to be exported.

(iii) The estimated total quantity of the hazardous waste in units as specified in the instructions to the Uniform Hazardous Waste Manifest Form (8700-22);

(iv) All points of entry to and departure from each foreign country through which the hazardous waste will pass;

(v) A description of the means by which each shipment of the hazardous waste will be transported (e.g., mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.));

(vi) A description of the manner in which the hazardous waste will be treated, stored or disposed of in the receiving country (e.g., land or ocean incineration, other land disposal, ocean dumping, recycling);

(vii) The name and site address of the consignee and any alternate consignee; and

(viii) The name of any transit countries through which the hazardous waste will be sent and a description of the approximate length of time the hazardous

waste will remain in such country and the nature of its handling while there;

(b) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting, and Data Division (2222A), United States Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting, and Data Division (2222A), United States Environmental Protection Agency, Ariel Rios Bldg., 12th St. and Pennsylvania Ave., NW., Washington, DC. In both cases, the following shall be prominently displayed on the front of the envelope: "Attention; Notification of Intent to Export.

(c) Except for changes to the telephone number in paragraph (a)(1) of this section, changes to paragraph (a)(2)(v) of this section and decreases in the quantity indicated pursuant to paragraph (a)(2)(iii) of this section when the conditions specified on the original notification change (including any exceedance of the estimate of the quantity of hazardous waste specified in the original notification), the primary exporter must provide EPA with a written renotification of the change. The shipment cannot take place until consent of the receiving country to the changes (except for changes to paragraph (a)(2)(viii) of this section and in the ports of entry to and departure from transit countries pursuant to paragraph (a)(2)(iv) of this section) has been obtained and the primary exporter receives an EPA Acknowledgment of Consent reflecting the receiving country's consent to the changes.

(d) Upon request by EPA, a primary exporter shall furnish to EPA any additional information which a receiving country requests in order to respond to a notification.

(e) [Reserved]

(f) Where the receiving country consents to the receipt of the hazardous waste, EPA will forward an EPA Acknowledgment of Consent to the primary exporter for purposes of subsection 11-262-54(h). Where the receiving country objects to receipt of the hazardous waste or withdraws a prior consent, EPA will notify the primary exporter in writing. EPA will also notify the primary exporter of any responses from transit countries. [Eff 6/18/94; am 3/13/99; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: 40 C.F.R. §262.53)

§11-262-54 <u>Special manifest requirements.</u> A primary exporter must comply with the manifest requirements of sections 11-262-20 through 11-262-23 except that:

(a) In lieu of the name, site address and EPA identification number of the designated permitted facility, the primary exporter must enter the name and site address of the consignee;

(b) In lieu of the name, site address and EPA identification number of a permitted alternate facility, the primary exporter may enter the name and site address of any alternate consignee.

(c) In Special Handling Instructions and Additional Information, the primary exporter must identify the point of departure from the United States;

(d) The following statement must be added to the end of the first sentence of the certification set forth in Item 16 of the Uniform Hazardous Waste Manifest Form: "and conforms to the terms of the attached EPA Acknowledgment of Consent";

(e) In lieu of the requirements of section 11-262-21, the primary exporter must obtain the manifest form from the State.

(f) The primary exporter must require the consignee to confirm in writing the delivery of the hazardous waste to that facility and to describe any significant discrepancies (as defined in subsection 11-264-72(a)) between the manifest and the shipment. A copy of the manifest signed by such facility may be used to confirm delivery of the hazardous waste.

(g) In lieu of the requirements of subsection 11-262-20(d), where a shipment cannot be delivered for any reason to the designated or alternate consignee, the primary exporter must:

(1) Renotify EPA of a change in the conditions of the original notification to allow shipment to a new consignee in accordance with subsection 11-262-53(c) and obtain an EPA Acknowledgment of Consent prior to delivery; or

(2) Instruct the transporter to return the waste to the primary exporter in the State or designate another facility within the United States; and

(3) Instruct the transporter to revise the manifest in accordance with the primary exporter's instructions.

(h) The primary exporter must attach a copy of the EPA Acknowledgment of Consent to the shipment to the manifest which must accompany the hazardous waste shipment. For exports by rail or water (bulk shipment), the primary exporter must provide the transporter with an EPA Acknowledgment of Consent which must accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipment) the primary exporter must attach the copy of the EPA Acknowledgment of Consent to the shipping paper.

(i) The primary exporter shall provide the transporter with an additional copy of the manifest for delivery to the U.S. Customs official at the point the hazardous waste leaves the United States in accordance with paragraph 11-263-20(g)(4).

[Eff 6/18/94; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: 40 C.F.R. §262.54)

§11-262-55 Exception reports. In lieu of the requirements of section 11-262-42, a primary exporter must file an exception report with the Administrator if:

(a) He has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within forty-five (45) days from the date it was accepted by the initial transporter;

(b) Within ninety (90) days from the date the waste was accepted by the initial transporter, the primary exporter has not received written confirmation from the consignee that the hazardous waste was received;

(c) The waste is returned to the United States. [Eff 6/18/94; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: 40 C.F.R. §262.55)

§11-262-56 Annual reports. (a) Primary exporters of hazardous waste shall file with the Administrator no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all hazardous waste exported during the previous calendar year. Such reports shall include the following:

(1) The EPA identification number, name, and mailing and site address of the exporter;

(2) The calendar year covered by the report;

(3) The name and site address of each consignee;

(4) By consignee, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number (from subchapter C or D of chapter 11-261 or subpart C or D of 40 CFR Part 261), U.S. DOT hazard class, the name and U.S. EPA identification number (where applicable) for each transporter used, the total amount of waste shipped and number of shipments pursuant to each notification;

(5) Except for hazardous waste produced by exporters of greater than 100 kg but less than 1000 kg in a calendar month, unless provided pursuant to section 11-262-41, in even numbered years:

(i) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and

(ii) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984.

(6) A certification signed by the primary exporter which states:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted

in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment."

(b) Annual reports submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting, and Data Division (2222A), United States Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Hand-delivered reports should be sent to: Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting, and Data Division (2222A), United States Environmental Protection Agency, Ariel Rios Bldg., 12th St. and Pennsylvania Ave., NW., Washington, DC. [Eff 6/18/94; am 3/13/99; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: 40 C.F.R. §262.56)

§11-262-57 Recordkeeping. (a) For all exports a primary exporter must:

(1) Keep a copy of each notification of intent to export for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

(2) Keep a copy of each EPA Acknowledgment of Consent for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

(3) Keep a copy of each confirmation of delivery of the hazardous waste from the consignee for at least three years from the date the hazardous waste was accepted by the initial transporter; and

(4) Keep a copy of each annual report for a period of at least three years from the due date of the report.

(b) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator or director. [Eff 6/18/94; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: 40 C.F.R. §262.57)

§11-262-58 International agreements. (a) Any person who exports or imports hazardous waste subject to the federal manifest requirements of 40 CFR Part 262, or subject to the universal waste management standards of 40 CFR Part 273, or subject to chapter 11-273, to or from designated member countries

of the Organization for Economic Cooperation and Development (OECD) as defined in paragraph (a)(1) for purposes of recovery is subject to subchapter H of this chapter. The requirements of subchapters E and F do not apply.

(1) For the purposes of this subchapter, the designated OECD countries consist of Australia, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom, and the United States.

(2) For the purposes of this subchapter, Canada and Mexico are considered OECD member countries only for the purpose of transit.

(b) Any person who exports hazardous waste to or imports hazardous waste from: a designated OECD member country for purposes other than recovery (e.g., incineration, disposal), Mexico (for any purpose), or Canada (for any purpose) remains subject to the requirements of subchapters E and F. [Eff 3/13/99; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: 40 C.F.R. §262.58)

SUBCHAPTER F

IMPORTS OF HAZARDOUS WASTE

§11-262-60 Imports of hazardous waste from a foreign country. (a) Any person who imports hazardous waste from a foreign country into the United States must comply with the requirements of this chapter and the special requirements of this subchapter.

(b) When importing hazardous waste, a person must meet all the requirements of subsection 11-262-20(a) for the manifest except that:

(1) In place of the generator's name, address and EPA identification number, the name and address of the foreign generator and the importer's name, address and EPA identification number must be used.

(2) In place of the generator's signature on the certification statement, the U.S. importer or his agent must sign and date the certification and obtain the signature of the initial transporter.

(c) A person who imports hazardous waste must obtain the manifest form from the State.

(d) In addition to the requirements specified in subsections (a), (b), and (c), any person who imports hazardous waste from a foreign country into the State must submit the following information in writing to the director within thirty days after the waste has arrived in the State:

(1) The date the waste arrived in the State; and

(2) The disposition of the waste, i.e. storage, treatment, recycling, disposal.

(e) The requirements of subsection (d) shall not apply if:

(1) The waste does not stay in the State for more than ten days; and

(2) A generator with an EPA identification number does not assume the generator status for the waste. [Eff 6/18/94; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: 40 C.F.R. §262.60)

§11-262-61 Imports of hazardous waste from any state. (a) Any person who imports hazardous waste from any state into the State must comply with subsection 11-262-20(a) and submit the following information in writing to the director within thirty days after the waste has arrived in the State:

(1) The date the waste arrived in the State; and

(2) The disposition of the waste, i.e. storage, treatment, recycling, disposal.

(b) The requirements of subsection (a) shall not apply if:

(1) The waste does not stay in the State for more than ten days; and

(2) A generator with an EPA identification number does not assume the generator status for the waste. [Eff 6/18/94; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: None)

SUBCHAPTER G

FARMERS

§11-262-70 Farmers. A farmer disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with the standards in this chapter or other standards in chapters 11-264, 11-265, 11-268, or 11-270 for those wastes provided he triple rinses each emptied pesticide container in accordance with paragraph 11-261-7(b)(3) and disposes of the pesticide residues on his own farm in a manner consistent with the disposal instructions on the pesticide label. [Eff 6/18/94; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: 40 C.F.R. §262.70)

SUBCHAPTER H

TRANSFRONTIER SHIPMENTS OF HAZARDOUS WASTE FOR RECOVERY WITHIN THE OECD

§11-262-80 Applicability. (a) The requirements of this subchapter apply to imports and exports of wastes that are considered hazardous under United States national procedures and are destined for recovery operations in the countries listed in section 11-262-58(a)(1). A waste is considered hazardous under United States national procedures if it meets the federal definition of hazardous waste in 40 CFR 261.3 and it is subject to either the federal manifesting requirements at 40 CFR Part 262, Subpart B, to the universal waste management standards of 40 CFR Part 273, or to chapter 11-273.

(b) Any person (notifier, consignee, or recovery facility operator) who mixes two or more wastes (including hazardous and non-hazardous wastes) or otherwise subjects two or more wastes (including hazardous and non-hazardous wastes) to physical or chemical transformation operations, and thereby creates a new hazardous waste, becomes a generator and assumes all subsequent generator duties under chapter 342J, HRS and the rules adopted thereunder, and any notifier duties, if applicable, under this subchapter. [Eff 3/13/99; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: 40 C.F.R. §262.80)

§11-262-81 Definitions. The following definitions apply to this subchapter.

(a) "Competent authorities" means the regulatory authorities of concerned countries having jurisdiction over transfrontier movements of wastes destined for recovery operations.

(b) "Concerned countries" means the exporting and importing OECD member countries and any OECD member countries of transit.

(c) "Consignee" means the person to whom possession or other form of legal control of the waste is assigned at the time the waste is received in the importing country.

(d) "Country of transit" means any designated OECD country in sections 11-262-58(a)(1) and (a)(2) other than the exporting or importing country across which a transfrontier movement of wastes is planned or takes place.

(e) "Exporting country" means any designated OECD member country in section 11-262-58(a)(1) from which a transfrontier movement of wastes is planned or has commenced.

(f) "Importing country" means any designated OECD country in section 11-262-58(a)(1) to which a transfrontier movement of wastes is planned or takes place for the purpose of submitting the wastes to recovery operations therein.

(g) "Notifier" means the person under the jurisdiction of the exporting country who has, or will have at the time the planned transfrontier movement commences, possession or other forms of legal control of the wastes and who proposes their transfrontier movement for the ultimate purpose of submitting them to recovery operations. When the United States (U.S.) is

the exporting country, notifier is interpreted to mean a person domiciled in the U.S.

(h) "OECD area" means all land or marine areas under the national jurisdiction of any designated OECD member country in section 11-262-58. When the regulations refer to shipments to or from an OECD country, this means OECD area.

(i) "Recognized trader" means a person who, with appropriate authorization of concerned countries, acts in the role of principal to purchase and subsequently sell wastes; this person has legal control of such wastes from time of purchase to time of sale; such a person may act to arrange and facilitate transfrontier movements of wastes destined for recovery operations.

(j) "Recovery facility" means an entity which, under applicable domestic law, is operating or is authorized to operate in the importing country to receive wastes and to perform recovery operations on them.

(k) "Recovery operations" means activities leading to resource recovery, recycling, reclamation, direct re-use or alternative uses as listed in Table 2.B of the Annex of OECD Council Decision C(88)90(Final) of 27 May 1988, (available from the United States Environmental Protection Agency, RCRA Information Center (RIC), 1235 Jefferson-Davis Highway, first floor, Arlington, VA 22203 (Docket #F-94-IEHF-FFFFF) and the Organisation for Economic Cooperation and Development, Environment Direcorate, 2 rue Andre Pascal, 75775 Paris Cedex 16, France) which include:

R1 Use as a fuel (other than in direct incineration) or other means to generate energy
R2 Solvent reclamation/regeneration
R3 Recycling/reclamation of organic substances which are not used as solvents
R4 Recycling/reclamation of metals and metal compounds
R5 Recycling/reclamation of other inorganic materials
R6 Regeneration of acids or bases
R7 Recovery of components used for pollution control
R8 Recovery of components from catalysts
R9 Used oil re-refining or other reuses of previously used oil
R10 Land treatment resulting in benefit to agriculture or ecological improvement
R11 Uses of residual materials obtained from any of the operations numbered R1-R10
R12 Exchange of wastes for submission to any of the operations numbered R1-R11
R13 Accumulation of material intended for any operation in Table 2.B

(l) "Transfrontier movement" means any shipment of wastes destined for recovery operations from an area under the national jurisdiction of one OECD member country to an area under the national jurisdiction of another OECD member country. [Eff

3/13/99; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: 40 C.F.R. §262.81)

§11-262-82 General conditions. (a) Scope. The level of control for exports and imports of waste is indicated by assignment of the waste to a green, amber, or red list and by United States national procedures as defined in section 11-262-80(a). The green, amber, and red lists are incorporated by reference in section 11-262-89(e).

(1) Wastes on the green list are subject to existing controls normally applied to commercial transactions, except as provided below:

(i) Green-list wastes that are considered hazardous under United States national procedures are subject to amber-list controls.

(ii) Green-list wastes that are sufficiently contaminated or mixed with amber-list wastes, such that the waste or waste mixture is considered hazardous under United States national procedures, are subject to amber-list controls.

(iii) Green-list wastes that are sufficiently contaminated or mixed with other wastes subject to red-list controls such that the waste or waste mixture is considered hazardous under United States national procedures must be handled in accordance with the red-list controls.

(2) Wastes on the amber list that are considered hazardous under United States national procedures as defined in section 11-262-80(a) are subject to the amber-list controls of this subchapter.

(i) If amber-list wastes are sufficiently contaminated or mixed with other wastes subject to red-list controls such that the waste or waste mixture is considered hazardous under United States national procedures, the wastes must be handled in accordance with the red-list controls.

(ii) [Reserved].

(3) Wastes on the red list that are considered hazardous under United States national procedures as defined in section 11-262-80(a) are subject to the red-list controls of this subchapter.

Note to paragraph (a)(3): Some wastes on the amber or red lists are not listed or otherwise identified as hazardous under RCRA (e.g., polychlorinated biphenyls) and therefore are not subject to the amber- or red-list controls of this subchapter. Regardless of the status of the waste under RCRA, however, other federal environmental statutes (e.g., the Federal Toxic

Substances Control Act) may restrict certain waste imports or exports. Such restrictions continue to apply without regard to this subchapter.

(4) Wastes not yet assigned to a list are eligible for transfrontier movements, as follows:

(i) If such wastes are considered hazardous under United States national procedures as defined in section 11-262-80(a), these wastes are subject to the red-list controls; or

(ii) If such wastes are not considered hazardous under United States national procedures as defined in section 11-262-80(a), such wastes may move as though they appeared on the green list.

(b) General conditions applicable to transfrontier movements of hazardous waste.

(1) The waste must be destined for recovery operations at a facility that, under applicable domestic law, is operating or is authorized to operate in the importing country;

(2) The transfrontier movement must be in compliance with applicable international transport agreements; and

Note to paragraph (b)(2): These international agreements include, but are not limited to, the Chicago Convention (1944), ADR (1957), ADNR (1970), MARPOL Convention (1973/1978), SOLAS Convention (1974), IMDG Code (1985), COTIF (1985), and RID (1985).

(3) Any transit of waste through a non-OECD member country must be conducted in compliance with all applicable international and national laws and regulations.

(c) Provisions relating to re-export for recovery to a third country.

(1) Re-export of wastes subject to the amber-list control system from the United States, as the importing country, to a third country listed in section 11-262-58(a)(1) may occur only after a notifier in the United States provides notification to and obtains consent of the competent authorities in the third country, the original exporting country, and new transit countries. The notification must comply with the notice and consent procedures in section 11-262-83 for all concerned countries and the original exporting country. The competent authorities of the original exporting country as well as the competent authorities of all other concerned countries have 30 days to object to the proposed movement.

(i) The 30-day period begins once the competent authorities of both the initial exporting country

and new importing country issue Acknowledgements of Receipt of the notification.

(ii) The transfrontier movement may commence if no objection has been lodged after the 30-day period has passed or immediately after written consent is received from all relevant OECD importing and transit countries.

(2) Re-export of waste subject to the red-list control system from the original importing country to a third country listed in section 11-262-58(a)(1) may occur only following notification of the competent authorities of the third country, the original exporting country, and new transit countries by a notifier in the original importing country in accordance with section 11-262-83. The transfrontier movement may not proceed until receipt by the original importing country of written consent from the competent authorities of the third country, the original exporting country, and new transit countries.

(3) In the case of re-export of amber or red-list wastes to a country other than those in section 11-262-58(a)(1), notification to and consent of the competent authorities of the original OECD member country of export and any OECD member countries of transit is required as specified in paragraphs (c)(1) and (c)(2) in addition to compliance with all international agreements and arrangements to which the first importing OECD member country is a party and all applicable regulatory requirements for exports from the first importing country. [Eff 3/13/99; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: 40 C.F.R. §262.82)

§11-262-83 <u>Notification and consent.</u> (a) Applicability. Consent must be obtained from the competent authorities of the relevant OECD importing and transit countries prior to exporting hazardous waste destined for recovery operations subject to this subchapter. Hazardous wastes subject to amber-list controls are subject to the requirements of subsection (b); hazardous wastes subject to red-list controls are subject to the requirements of subsection (c); and wastes not identified on any list are subject to the requirements of subsection (d).

(b) Amber-list wastes. The export from the United States of hazardous wastes as described in section 11-262-80(a) that appear on the amber list is prohibited unless the notification and consent requirements of paragraph (b)(1) or paragraph (b)(2) are met.

(1) Transactions requiring specific consent:

(i) Notification. At least 45 days prior to commencement of the transfrontier movement, the notifier must provide written notification in English of the proposed transfrontier movement to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), United States Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, with the words "Attention: OECD Export Notification" prominently displayed on the envelope. This notification must include all of the information identified in subsection (e). In cases where wastes having similar physical and chemical characteristics, the same United Nations classification, and the same RCRA waste codes are to be sent periodically to the same recovery facility by the same notifier, the notifier may submit one notification of intent to export these wastes in multiple shipments during a period of up to one year.

(ii) Tacit consent. If no objection has been lodged by any concerned country (i.e., exporting, importing, or transit countries) to a notification provided pursuant to subparagraph (b)(1)(i) within 30 days after the date of issuance of the Acknowledgment of Receipt of notification by the competent authority of the importing country, the transfrontier movement may commence. Tacit consent expires one calendar year after the close of the 30 day period; renotification and renewal of all consents is required for exports after that date.

(iii) Written consent. If the competent authorities of all the relevant OECD importing and transit countries provide written consent in a period less than 30 days, the transfrontier movement may commence immediately after all necessary consents are received. Written consent expires for each relevant OECD importing and transit country one calendar year after the date of that country's consent unless otherwise specified; renotification and renewal of each expired consent is required for exports after that date.

(2) Shipments to facilities pre-approved by the competent authorities of the importing countries to accept specific wastes for recovery:

(i) The notifier must provide the United States Environmental Protection Agency the information identified in subsection (e) in English, at least 10 days in advance of commencing shipment to a

pre-approved facility. The notification should indicate that the recovery facility is pre-approved, and may apply to a single specific shipment or to multiple shipments as described in subparagraph (b)(1)(i). This information must be sent to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), United States Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, with the words "OECD Export Notification -- Pre-approved Facility" prominently displayed on the envelope.

(ii) Shipments may commence after the notification required in paragraph (b)(1)(i) has been received by the competent authorities of all concerned countries, unless the notifier has received information indicating that the competent authorities of one or more concerned countries objects to the shipment.

(c) Red-list wastes. The export from the United States of hazardous wastes as described in section 11-262-80(a) that appear on the red list is prohibited unless notice is given pursuant to paragraph (b)(1)(i) and the notifier receives written consent from the importing country and any transit countries prior to commencement of the transfrontier movement.

(d) Unlisted wastes. Wastes not assigned to the green, amber, or red list that are considered hazardous under United States national procedures as defined in section 11-262-80(a) are subject to the notification and consent requirements established for red-list wastes in accordance with subsection (c). Unlisted wastes that are not considered hazardous under United States national procedures as defined in section 11-262-80(a) are not subject to amber or red controls when exported or imported.

(e) Notification information. Notifications submitted under this section must include:

(1) Serial number or other accepted identifier of the notification form;

(2) Notifier name and EPA identification number (if applicable), address, and telephone and telefax numbers;

(3) Importing recovery facility name, address, telephone and telefax numbers, and technologies employed;

(4) Consignee name (if not the owner or operator of the recovery facility) address, and telephone and telefax numbers; whether the consignee will engage in waste exchange or storage prior to delivering the waste to the final recovery facility and identification of recovery operations to be employed at the final recovery facility;

(5) Intended transporters and/or their agents;

(6) Country of export and relevant competent authority, and point of departure;
(7) Countries of transit and relevant competent authorities and points of entry and departure;
(8) Country of import and relevant competent authority, and point of entry;
(9) Statement of whether the notification is a single notification or a general notification. If general, include period of validity requested;
(10) Date foreseen for commencement of transfrontier movement;
(11) Designation of waste type(s) from the appropriate list (amber or red and waste list code), descriptions of each waste type, estimated total quantity of each, RCRA waste code, and United Nations number for each waste type; and
(12) Certification/Declaration signed by the notifier that states:

I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally-enforceable written contractual obligations have been entered into, and that any applicable insurance or other financial guarantees are or shall be in force covering the transfrontier movement.

Name:_____
Signature:_____
Date:_____

Note to paragraph (e)(12): The United States does not currently require financial assurance; however, United States exporters may be asked by other governments to provide and certify to such assurance as a condition of obtaining consent to a proposed movement. [Eff 3/13/99; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: 40 C.F.R. §262.83)

§11-262-84 Tracking document. (a) All United States parties subject to the contract provisions of section 11-262-85 must ensure that a tracking document meeting the conditions of section 11-262-84(b) accompanies each transfrontier shipment of wastes subject to amber-list or red-list controls from the initiation of the shipment until it reaches the final recovery facility, including cases in which the waste is stored and/or exchanged by the consignee prior to shipment to the final recovery facility, except as provided in section 11-262-84(a)(1) and (2).

(1) For shipments of hazardous waste within the United States solely by water (bulk shipments only) the generator must forward the tracking document with the manifest to the last water (bulk shipment) transporter to handle the waste in the United States if exported by water, (in accordance with the manifest routing procedures at section 11-262-23(c)).

(2) For rail shipments of hazardous waste within the United States which originate at the site of generation, the generator must forward the tracking document with the manifest (in accordance with the routing procedures for the manifest in section 11-262-23(d)) to the next non-rail transporter, if any, or the last rail transporter to handle the waste in the United States if exported by rail.

(b) The tracking document must include all information required under section 11-262-83 (for notification), and the following:

(1) Date shipment commenced.

(2) Name (if not notifier), address, and telephone and telefax numbers of primary exporter.

(3) Company name and EPA identification number of all transporters.

(4) Identification (license, registered name or registration number) of means of transport, including types of packaging.

(5) Any special precautions to be taken by transporters.

(6) Certification/declaration signed by notifier that no objection to the shipment has been lodged as follows:

I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally-enforceable written contractual obligations have been entered into, that any applicable insurance or other financial guarantees are or shall be in force covering the transfrontier movement, and that:

1. All necessary consents have been received; OR

2. The shipment is directed at a recovery facility within the OECD area and no objection has been received from any of the concerned countries within the 30 day tacit consent period; or

3. The shipment is directed at a recovery facility pre-authorized for that type of waste within the OECD area; such an authorization has not been revoked, and no objection has been received from any of the concerned countries.

(delete sentences that are not applicable)

Name:_____

Signature:_____

Date:_____

(7) Appropriate signatures for each custody transfer (e.g., transporter, consignee, and owner or operator of the recovery facility).

(c) Notifiers also must comply with the special manifest requirements of section 11-262-54(a), (b), (c), (e), and (i) and consignees must comply with the import requirements of subchapter F of chapter 11-262.

(d) Each United States person that has physical custody of the waste from the time the movement commences until it arrives at the recovery facility must sign the tracking document (e.g. transporter, consignee, and owner or operator of the recovery facility).

(e) Within 3 working days of the receipt of imports subject to this subchapter, the owner or operator of the United States recovery facility must send signed copies of the tracking document to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), United States Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and to the competent authorities of the exporting and transit countries. [Eff 3/13/99; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: 40 C.F.R. §262.84)

§11-262-85 Contracts. (a) Transfrontier movements of hazardous wastes subject to amber or red control procedures are prohibited unless they occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Such contracts or equivalent arrangements must be executed by the notifier and the owner or operator of the recovery facility, and must specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of this section only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangement.

(b) Contracts or equivalent arrangements must specify the name and EPA identification number, where available, of:

(1) The generator of each type of waste;

(2) Each person who will have physical custody of the wastes;

(3) Each person who will have legal control of the wastes; and

(4) The recovery facility.

(c) Contracts or equivalent arrangements must specify which party to the contract will assume responsibility for alternate management of the wastes if its disposition cannot be carried out as described in the notification of intent to export. In such cases, contracts must specify that:

(1) The person having actual possession or physical control over the wastes will immediately inform the notifier and the competent authorities of the exporting and importing countries and, if the wastes are located in a country of transit, the competent authorities of that country; and

(2) The person specified in the contract will assume responsibility for the adequate management of the wastes in compliance with applicable laws and regulations including, if necessary, arranging their return to the original country of export.

(d) Contracts must specify that the consignee will provide the notification required in section 11-262-82(c) prior to re-export of controlled wastes to a third country.

(e) Contracts or equivalent arrangements must include provisions for financial guarantees, if required by the competent authorities of any concerned country, in accordance with applicable national or international law requirements.

Note to subsection (e): Financial guarantees so required are intended to provide for alternate recycling, disposal or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations cannot be carried out as foreseen. The United States does not require such financial guarantees at this time; however, some OECD countries do. It is the responsibility of the notifier to ascertain and comply with such requirements; in some cases, transporters or consignees may refuse to enter into the necessary contracts absent specific references or certifications to financial guarantees.

(f) Contracts or equivalent arrangements must contain provisions requiring each contracting party to comply with all applicable requirements of this subchapter.

(g) Upon request by EPA, United States notifiers, consignees, or recovery facilities must submit to EPA copies of contracts, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Information contained in the contracts or equivalent arrangements for which a claim of confidentiality is asserted in accordance with 40 CFR 2.203(b) will be treated as confidential and will be disclosed by EPA only as provided in 40 CFR 260.2.

Note to subsection (g): Although the United States does not require routine submission of contracts at this time, OECD Council Decision C(92)39/FINAL allows members to impose such requirements. When other OECD countries require submission of partial or complete copies of the contract as a condition to granting consent to proposed movements, EPA will request the

required information; absent submission of such information, some OECD countries may deny consent for the proposed movement. [Eff 3/13/99; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: 40 C.F.R. §262.85)

§11-262-86 Provisions relating to recognized traders.

(a) A recognized trader who takes physical custody of a waste and conducts recovery operations (including storage prior to recovery) is acting as the owner or operator of a recovery facility and must be so authorized in accordance with all applicable federal laws.

(b) A recognized trader acting as a notifier or consignee for transfrontier shipments of waste must comply with all the requirements of this subchapter associated with being a notifier or consignee. [Eff 3/13/99; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: 40 C.F.R. §262.86)

§11-262-87 Reporting and recordkeeping. (a) Annual reports. For all waste movements subject to this subchapter, persons (e.g., notifiers, recognized traders) who meet the definition of primary exporter in section 11-262-51 shall file an annual report with the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), United States Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, no later than March 1 of each year summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. (If the primary exporter is required to file an annual report for waste exports that are not covered under this subchapter, he or she may include all export information in one report provided the following information on exports of waste destined for recovery within the designated OECD member countries is contained in a separate section). Such reports shall include the following:

(1) The EPA identification number, name, and mailing and site address of the notifier filing the report;
(2) The calendar year covered by the report;
(3) The name and site address of each final recovery facility;
(4) By final recovery facility, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number (from chapter 11-261, subchapter C or D), designation of waste type(s) from OECD waste list and applicable waste code from the OECD lists, DOT hazard class, the name and United States EPA identification number (where applicable) for each transporter used, the total amount of hazardous waste

shipped pursuant to this subchapter, and number of shipments pursuant to each notification;

(5) In even numbered years, for each hazardous waste exported, except for hazardous waste produced by exporters of greater than 100 kg. but less than 1000 kg. in a calendar month, and except for hazardous waste for which information was already provided pursuant to section 11-262-41:

(i) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and

(ii) A description of the changes in volume and toxicity of the waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984; and

(6) A certification signed by the person acting as primary exporter that states:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.

(b) Exception reports. Any person who meets the definition of primary exporter in section 11-262-51 must file an exception report in lieu of the requirements of section 11-262-42 with the Administrator if any of the following occurs:

(1) He or she has not received a copy of the tracking documentation signed by the transporter stating point of departure of the waste from the United States, within forty-five (45) days from the date it was accepted by the initial transporter;

(2) Within ninety (90) days from the date the waste was accepted by the initial transporter, the notifier has not received written confirmation from the recovery facility that the hazardous waste was received;

(3) The waste is returned to the United States.

(c) Recordkeeping.

(1) Persons who meet the definition of primary exporter in section 11-262-51 shall keep the following records:

(i) A copy of each notification of intent to export and all written consents obtained from the competent authorities of concerned countries for a period of at least three years from the date the

hazardous waste was accepted by the initial transporter;

(ii) A copy of each annual report for a period of at least three years from the due date of the report; and

(iii) A copy of any exception reports and a copy of each confirmation of delivery (i.e., tracking documentation) sent by the recovery facility to the notifier for at least three years from the date the hazardous waste was accepted by the initial transporter or received by the recovery facility, whichever is applicable.

(2) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator. [Eff 3/13/99; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: 40 C.F.R. §262.87)

§11-262-88 Pre-approval for United States recovery facilities. [Reserved]

§11-262-89 OECD waste lists. (a) General. For the purposes of this subchapter, a waste is considered hazardous under United States national procedures, and hence subject to this subchapter, if the waste:

(1) Meets the federal definition of hazardous waste in 40 CFR 261.3; and

(2) Is subject to either the federal RCRA manifesting requirements at 40 CFR part 262, subpart B, to the universal waste management standards of 40 CFR part 273, or to chapter 11-273.

(b) If a waste is hazardous under subsection (a) and it appears on the amber or red list, it is subject to amber- or red-list requirements respectively;

(c) If a waste is hazardous under subsection (a) and it does not appear on either amber or red lists, it is subject to red-list requirements.

(d) The appropriate control procedures for hazardous wastes and hazardous waste mixtures are addressed in section 11-262-82.

(e) The OECD Green List of Wastes (revised May 1994), Amber List of Wastes and Red List of Wastes (both revised May 1993) as set forth in Appendix 3, Appendix 4 and Appendix 5, respectively, to the OECD Council Decision C(92)39/FINAL (Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery Operations) are incorporated by reference. The materials are available for inspection at: the Office of the Federal Register, 800 North Capitol Street, NW., suite 700,

Washington, DC; the United States Environmental Protection Agency, RCRA Information Center (RIC), 1235 Jefferson-Davis Highway, first floor, Arlington, VA 22203 (Docket #F-94-IEHF-FFFFF) and may be obtained from the Organisation for Economic Cooperation and Development, Environment Direcorate, 2 rue Andre Pascal, 75775 Paris Cedex 16, France. [Eff 3/13/99; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: 40 C.F.R. §262.89)

SUBCHAPTER I

APPENDIX

§11-262-100 Appendix. The Appendix to 40 CFR Part 262, revised as of May 25, 1998, entitled "Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700-22 and 8700-22A and Their Instructions)" is made a part of this chapter. [Eff 3/13/99; comp SEP 20 1999] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: None)

DEPARTMENT OF HEALTH

The compilation of chapter 11-262, Hawaii Administrative Rules, on the Summary page dated SEP 2 1999, was adopted on SEP 2 1999. No public notice was provided and no public hearing was conducted.

This compilation shall take effect ten days after filing with the Office of the Lieutenant Governor.

BRUCE S. ANDERSON, Ph.D., M.P.H.
Director of Health

APPROVED AS TO FORM:

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Deputy Attorney General

BENJAMIN J. CAYETANO
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Date: 9/8/99

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